



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 25, 2022

CBCA 7235-FEMA

In the Matter of EARLY EDUCATION AND CARE, INC.

Michael Andrew Sokolson, Delray Beach, FL; Erik Mayo, Baton Rouge, LA; and Adam Thomas Ferguson, Miami Beach, FL, counsel for Applicant; and Sabara Quinn, Executive Director of Early Education and Care, Inc., Panama City, FL, appearing for Applicant.

Sherin Joseph, Appeals Officer, and Melissa Shirah, Recovery Bureau Chief, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Charles Schexnaildre, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Baton Rouge, LA; and Shahnaz Yazdani, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **BEARDSLEY** (Chair), **GOODMAN**, and **SULLIVAN**.

On October 25, 2021, Early Education and Care, Inc. of Panama City, Florida (applicant), filed a request for arbitration against the Federal Emergency Management Agency (FEMA) in accordance with section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. § 5189a (2018). The parties elected to have a paper hearing pursuant to CBCA Rule 611 (48 CFR 6106.611 (2020)).

Background

Applicant is organized under Florida law as a 501(c)(3) private, non-profit (PNP) corporation. Applicant seeks to overturn FEMA's denial of public assistance (PA) to fund

a total of \$2,000,000 for damages incurred to the applicant's Jenks Building (the facility), which was demolished after sustaining damage from Hurricane Michael in October 2018.

FEMA determines PA eligibility based on four essential elements, which it reviews in order: (1) applicant eligibility; (2) facility eligibility; (3) work eligibility; and (4) cost eligibility. 44 CFR 206.220–.228. “FEMA must determine each building block eligible, starting at the foundation (Applicant) and working up to cost at the top of the pyramid.” FEMA Public Assistance and Program Policy Guide (Apr. 2018) (PAPPG) at 9.

Unlike governmental entities, PNPs have strict conditions for assistance. *See* 44 CFR 206.222(b); PAPPG at 11-14. FEMA is authorized to provide PA funding to PNP applicants only if they operate certain types of PNP facilities. 42 U.S.C. § 5172(a)(1); 44 CFR 206.222(b); PAPPG at 11-14. “For PNPs, an eligible facility” must provide “a critical service, which is defined as education, utility, emergency, or medical (see Table 1),” or provide “a noncritical, but essential social service AND provide[] those services to the general public (see Table 2).” PAPPG at 11. Section 406(a)(3)(B) of the Stafford Act and FEMA regulations define PNP critical services. *See* 42 U.S.C. § 5172(a)(3)(B); 44 CFR 206.226(c)(1). For eligible facilities that provide services that fall outside of these critical services, regulation defines “essential governmental service” facilities to include “community centers, libraries, . . . and facilities which provide health and safety services of a governmental nature.” 44 CFR 206.221(e)(7). Table 1 (“PNP Eligible Critical Services”) and table 2 (“PNP Eligible Non Critical, Essential Social Type Services”) of the PAPPG more specifically identify the types of facilities and services that are eligible for PA funding, such as community centers, libraries, and facilities offering food assistance programs and health and safety services. PAPPG at 12-13. Table 2 states: “With the exception of custodial care facilities and museums, administrative and support buildings essential to the operation of PNP non-critical services are NOT eligible facilities.” PAPPG at 13.

While FEMA acknowledged that applicant operated an eligible PNP that provided a non-critical service, FEMA concluded that the facility was an administrative building and was therefore not eligible because the facility did not fall under the above exception for custodial care facilities and museums.

Applicant asserts that the facility was not an administrative building. Rather, applicant maintains that the facility hosted a variety of activities and social-type services for the general public. Specifically, applicant asserts that the facility was used for eligible, direct program services made available to Head Start and Early Head Start children and their families as well as the general public. Applicant offers evidence that it contends proves that three of these services—food assistance programs, health and safety services, and a library—were offered to the general public. FEMA counters that these services were not offered to the general public and reiterates its position that the facility is an administrative

facility.¹ We find that the facility was not an administrative building but was a community center, a library, and a facility offering health and safety services and food assistance programs to the general public.

Discussion

Applicant has offered affidavit testimony from individuals who have personal knowledge of the services that were offered at the facility to prove that these services were non-critical, essential, and offered to the general public.

Food Assistance Program

The facility's executive director, Ms. Sabara Quinn, states that a food assistance program was available to any person "who stepped foot inside the facility." The facility maintained a food assistance program with the goal of educating and empowering the general population to use the resources available to them to combat food insecurity in the general public. The facility's team members organized and operated the program from the facility, and the program served over 1200 families annually.

Ms. Quinn states further that the facility's team members would provide outreach to the general public regarding the collection and distribution campaigns of the program and food assistance workshops that were ongoing at the facility, and community members were encouraged to participate according their assessed needs. The physical facility was central to the program as it acted as the central hub for the collection, inventory, storage, and ultimate distribution to the general population of food and as a community training site.

It was not uncommon that destitute parents would come to the facility with their children seeking food assistance. Through the facility's food assistance program, families have been provided with food collected and stored at the facility, and educational seminars are regularly conducted for the general public at the facility. These seminars would cover such topics as the developmental nutritional needs of children and nutritional meal

¹ FEMA also emphasizes that in *Early Education & Care*, CBCA 6971-FEMA, 21-1 BCA ¶ 37,797, in response to a request for arbitration with regard to the same building, an arbitration panel affirmed FEMA's determination that applicant was not a critical service provider, as the building was not an elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965 (ESEA) and 44 CFR 206.221(a)(1). The issues raised in the current arbitration were not at issue in the previous arbitration, and applicant is not precluded by the result of the previous arbitration from raising them in the current arbitration.

preparation. The facility's family services coordinator used these seminars as an opportunity to provide parents attending them with nutritious meals that act to exemplify the health services-based curriculum taught while simultaneously battling food insecurity in the general public.

The facility also housed a food collection and distribution program, while simultaneously providing targeted food assistance and nutritional-based training to families in the general public. The facility's family services coordinator would provide families with physical examples of nutritional food during parental involvement training and socialization.

Additional testimony was offered by Ms. Kelli Melerski, who was employed as a family advocate and later as a family services supervisor, and worked at the facility for eighteen years. Her affidavit reiterated that the facility housed a food pantry that served to supplement and inform individuals about the larger food banks. Anyone who was assessed to be in need would be provided a food bag and resources to assist with identifying food assistance services.

FEMA alleges that the food services were not offered to the entire community and not on a continuing basis. While FEMA takes issue with the scope and continuity of the food assistance provided, FEMA has not rebutted the factual accuracy of the testimony offered by applicant's employees, which establishes that the facility offered food assistance programs to the general public on a continuing basis. We find that the food assistance program was a non-critical, essential service offered to the general public.

Health and Safety Services

Ms. Quinn offered testimony concerning the health and safety services provided by the facility. She stated that the facility did not provide medical care or treatment, but rather performed health-based services, such as screening and diagnostic testing, on an as needed basis. The results would be referred to medical professionals for treatment by physicians unaffiliated with the facility. The facility provided direct health services to the general population through regular health screenings conducted by licensed medical practitioners at the facility.

Home Base was a program operated from the facility by which a collection of medical professionals, the health team, would regularly conduct a suite of health services and provide referrals to medical specialists when medical care was needed. Members of the general public would initially come to the facility where the health team would test for lead exposure, conduct blood analysis, and test both vision and hearing.

One of the medical screenings performed at the facility was otoacoustic emission (OAE) tests. When these tests resulted in unfavorable results, a registered nurse would draft a report, attach the results from the OAE test, and refer the child for medical care with a pediatrician or audiologist. A registered nurse or the on-site disabilities specialist (sometimes both) would meet privately with the general public at the facility to develop health plans that would implement the health and safety training family members received at the facility, while setting attainable goals for the family to work toward.

Training seminars for the general population were also regularly conducted at the facility to provide parents with the tools required to address the needs to children with disabilities and mental health issues. The facility also regularly provided health services to the general population by health education classes. These classes would target topics such as childhood diseases, how to recognize illness, preventative health measures, control of contagions, dental hygiene, and childhood obesity. CPR and first aid training were also regularly conducted at the facility.

The facility maintained a nursing room which would be available to mothers. The nursing room was a health and safety service open to the public for use. It provided access to much needed facilities and health related information for mothers, as well as a safe area for nursing mothers to comfortably and privately breastfeed their children or pump to ensure continued milk production.

Often families are not capable of adequately communicating their healthcare needs, and these families required and were provided direct health services by way of communication with health providers. The facility team members would often find themselves serving as a liaison between those community members in need and their medical providers by facilitating follow-up care, health assessments, immunizations, school physicals, disability screenings, and other specialized care.

The facility provided safety services to the general population by way of safety education classes hosted by a variety of the team members, including the registered nurse. These classes would cover topics such as control of contagions, pedestrian safety, Halloween safety, food safety, fire safety, and bike safety.

Bike safety was offered through the Salvage Santa program, a service that operated out of the facility to promote pedestrian safety, combat obesity, and provide mobility support. The facility would conduct continuous outreach to request that the general public donate bicycles and other mobility devices in various states of repair. These items were stored at the facility where team volunteers would repair the items donated for use by the general population. The Salvage Santa program was available to take requests for mobility assistive devices tailored to specific community members' needs and endeavored to provide accessible

bicycles (or similar) to those most in need. In past years, children with an inability to ride a bicycle would be provided with individualized and developmentally appropriate mobility related toys, such as modified wagons. Those children would also be provided with specialized safety instructions tailored to their abilities. The Salvage Santa program volunteers would also host safety trainings targeted at road and pedestrian safety. This service fostered both the overall safety of the general public as well as the health of the general population by encouraging and promoting safe exercise.²

FEMA has provided no evidence to rebut the factual accuracy of the affidavit testimony offered by applicant. We find that this testimony establishes that the health and safety services offered by the facility were non-critical, essential services offered to the general public.

Library

Ms. Quinn's affidavit testimony describes the library in detail. The facility had on its premises a library, categorized by topic, that allowed members of the general public to borrow and return literature. This literature included health and well-being materials, various vocational educational resources, remedial educational materials, text books, and a wide variety of children's books. In addition to literature that would need to be returned after being borrowed, a wide variety of educational materials circulated at the onsite seminars and trainings that were available at the facility library. The facility library also maintained a computer bank for the use of the general population. The facility was frequently used by the general public as a resource to access the internet.

FEMA has offered various arguments attempting to prove that there was no library at the facility. It refers to a map that was submitted by applicant that does not designate where the library or other offices were located. However, we do not find the information on the map contradicts applicant's allegations as to the existence of the library nor is there any basis to question their veracity. We find that the testimony establishes the existence of a library at the facility, which was a non-critical, essential service offered to the general public.

Decision

Applicant has provided sufficient evidence to support that it offers three non-critical, essential, social-type services to the general public from the facility. FEMA's determination

² Applicant has also submitted affidavit testimony from Mr. Mike Jones, who personally performed the bicycle repairs and other services described in the Salvage Santa program.

that the facility was an administrative building was not correct, and applicant's facility is eligible for public assistance funding.

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge

Erica S. Beardsley

ERICA S. BEARDSLEY
Board Judge

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge